



State of Washington  
DRAFT  
REPORT OF EXAMINATION  
FOR WATER RIGHT APPLICATION

PRIORITY DATE  
5/12/2005

WATER RIGHT NUMBER  
G3-30441

MAILING ADDRESS  
Teck Washington Inc.  
PO Box 7  
Metaline, WA 99153-0007

SITE ADDRESS (IF DIFFERENT)  
Teck Washington, Inc.  
1382 Pend Oreille Mine Road  
Metaline, WA 99153

**Quantity Authorized for Withdrawal or Diversion**

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
400	GPM	30

**Purpose**

PURPOSE	WITHDRAWAL	ANNUAL QUANTITY (AF/YR)	PERIOD OF USE (mm/dd)
Mining and Fire Protection	400	30	01/01 - 12/31

**Source Location**

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
PEND OREILLE	GROUNDWATER		62-PEND OREILLE

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
1700 Sump	433915460031		39N	43E	15	NE¼NW¼	48.88677°	-117.35720°

Datum: WGS84

Location: 370 feet South and 2380 feet East from the NW corner of Section 15, T. 39 N., R. 43 E.W.M.

**Place of Use (See Attached Map)**

**PARCELS (NOT LISTED FOR SERVICE AREAS)**

433915460026, 433915460027, 433915460029, 433915460030, 433915460031

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

SE¼NW¼ of Section 15, Township 39 North, Range 43 East W.M.

### Proposed Works

Water is pumped from the 1700 sump through 10 inch schedule 40 pipe by a 200 hp Ingersoll-Rand model 14KKH 5 stage pump. This water will be diverted as needed to fill a 120,000 gallon tank.

### Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	December 1, 2013	December 1, 2015

### Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Upon Request by Ecology
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm)

### Provisions

#### Measurements, Monitoring, Metering and Reporting

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173.

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

#### Water Use Efficiency

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

#### Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

#### Instream flow

The Washington State Department of Fish and Wildlife (WDFW) has recommended that water rights from the Pend Oreille River be conditioned with instream flows of 7,700 cubic feet per second (cfs) on a year-round basis as measured at the USGS gauging station 12395500 near Newport, WA. Therefore, this permit shall be conditioned that all diversion shall cease when the 14-day average flow in the Pend Oreille River falls below 7,700 cfs at the Newport, WA gauging station.

**Proof of Appropriation**

The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the permit. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

**Findings of Facts**

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. G3-30441, subject to existing rights and the provisions specified above.

**Your Right To Appeal**

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this       day of       2012.

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Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

## INVESTIGATOR'S REPORT

Application for Water Right -- Teck Washington, Inc

Water Right Control Number G3-30441

Jeffrey MacLennan, Department of Ecology

## BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number G3-30441.

**Table 1 Summary of Requested Water Right**

<b>Applicant Name:</b>	Teck Washington, Inc
<b>Date of Application:</b>	5/12/2005
<b>Place of Use</b>	SE¼NW¼ of Section 15, Township 39 North, Range 43 East W.M.

<b>County</b>	<b>Waterbody</b>	<b>Tributary To</b>	<b>WRIA</b>
Pend Oreille	Groundwater		62-Pend Oreille

<b>Purpose</b>	<b>Rate</b>	<b>Unit</b>	<b>Ac-ft/yr</b>	<b>Begin Season</b>	<b>End Season</b>
Mining	400	GPM	30	01/01	12/31
Fire Protection					

<b>Source Name</b>	<b>Parcel</b>	<b>Well Tag</b>	<b>Twp</b>	<b>Rng</b>	<b>Sec</b>	<b>QQ Q</b>	<b>Latitude</b>	<b>Longitude</b>
Sump 1700	433915460031		39N	43E	15	NE¼NW¼	48.88677°	-117.35720°

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum: WGS84.

## Legal Requirements for Approval of Appropriation of Water

### *Public Notice*

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the *Newport Miner* on June 8 and 15, 2005. No letters of protest or concern were received.

### *Consultation with the Department of Fish and Wildlife*

The Department must give notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. Notification was sent to WDFW in May of 2005. There was no response.

### *State Environmental Policy Act (SEPA)*

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

The Pend Oreille Mine was subject to SEPA review during its initial development. A Final Environmental Impact Statement was issued July 12, 2000. This application combined with the Pend Oreille Mine's other water rights does not meet any of the above conditions, therefore, it is categorically exempt from SEPA and a threshold determination is not required.

## INVESTIGATION

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Ecology employees Kevin Brown and Jeff MacLennan met with Teck Washington, Inc. employees Dawn Purnea and David Riggleman at the Pend Oreille Mine on November 1, 2012. The Pend Oreille Mine is located two miles north of Metaline Falls, WA just off Hwy 31. The source of the water is a sump within the mine. Water is collected within this sump at the 1700 foot elevation. This is the same source as that used by water right permit No. G3-30082. The water from this sump is either diverted to the Pend Oreille River or toward a holding tank for use in mine operations.

### Other Rights Appurtenant to the Place of Use

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**Table 2 Summary of Other Rights Appurtenant to the Place of Use**

Document No.	Name	Purpose	Qi (gpm)	Qa (af)
G3-30082	Teck Cominco, Inc.	Mineral Milling; Fire Protection	350	50
G3-30312	Teck Washington, Inc.	Domestic Supply	30	7

This application is in addition to G3-30082 resulting in a total of 750 gpm and 80 acre-feet per year. According to Mr. Riggleman, the current infrastructure of pumps and pipes is capable of handling the increase.

The water provided under G3-30312 is supplied by a groundwater well with the unique well tag ID number BHP080. It is located about 1,000 feet west of the mine's facilities.

### Impairment Considerations

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Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. A water right application may not be approved if it would:

- Interrupt or interfere with the availability of water to an adequately constructed groundwater withdrawal facility of an existing right. An adequately constructed groundwater withdrawal facility is one that (a) is constructed in compliance with well construction requirements and (b)

fully penetrates the saturated zone of an aquifer or withdraws water from a reasonable and feasible pumping lift.

- Interrupt or interfere with the availability of water at the authorized point of diversion of a surface water right. A surface water right conditioned with instream flows may be impaired if a proposed use or change would cause the flow of the stream to fall to or below the instream flow more frequently or for a longer duration than was previously the case.
- Interrupt or interfere with the flow of water allocated by rule, water rights, or court decree to instream flows.
- Degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users (e.g., via sea water intrusion).

Ecology has not received any reports of well interference in this area. This proposal will remove a small portion of groundwater that would have flooded the mineshaft to the level of the regional water table. The water level of the regional water table may be controlled, in part, by surface water discharging to the groundwater aquifer from the Pend Oreille River. Extracting this water from the mineshaft for a beneficial use should not adversely impact adjacent surface or ground water sources. Due to the mine's proximity to the Pend Oreille River and leakage from the river into the mineshaft, it is likely groundwater is in hydraulic continuity with the Pend Oreille River and will be subject to flows recommended by the Department of Fish and Wildlife.

### Water Availability

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For water to be available for appropriation, it must be both physically and legally available.

#### *Physical availability*

For water to be physically available for appropriation there must be ground or surface water present in quantities and quality and on a sufficiently frequent basis to provide a reasonably reliable source for the requested beneficial use or uses. In addition, the following factors are considered:

- Volume of water represented by senior water rights, including federal or tribal reserved rights or claims;
- Water right claims registered under Chapter 90.14 RCW;
- Ground water uses established in accordance with Chapter 90.44 RCW, including those that are exempt from the requirement to obtain a permit; and
- Potential riparian water rights, including non-diversionary stock water.
- Lack of data indicating water usage can also be a consideration in determining water availability, if the department cannot ascertain the extent to which existing rights are consistently utilized and cannot affirmatively find that water is available for further appropriation.

#### *Legal availability*

To determine if water is legally available for appropriation, the following factors are considered:

- Regional water management plans – which may specifically close certain water bodies to further appropriation.
- Existing rights – which may already appropriate all physically available water.
- Fisheries and other instream uses (e.g., recreation and navigation). Instream needs, including instream and base flows set by regulation. Water is not available for out of stream uses if further reduction in the flow level of surface water would be detrimental to existing fishery resources.

- The Department may deny an application for a new appropriation in a watershed where adjudicated rights exceed the average low flow supply, even if the prior rights are not presently being exercised. Water would not become available for appropriation until existing rights are relinquished for non-use by state proceedings.

The Department of Ecology has not closed the Pend Oreille River to further consumptive appropriations; however, all diversions other than domestic and stockwater uses shall cease when the flow of the Pend Oreille River falls below 7,700 cfs at USGS gage #12395500. This low-flow is a recommendation from the Washington State Department of Fish and Wildlife (WDFW) and applies to surface and ground water in hydraulic continuity with the Pend Oreille River since October 18, 1999.

Therefore, water is available for appropriation as long as water usage for mining operations and fire protection cease when the Pend Oreille River falls below the low flow recommendation from the Washington State Department of Fish and Wildlife.

### Beneficial Use

The proposed use of water is defined in statute as a beneficial use (RCW 90.54.020(1)).

### Public Interest Considerations

#### *Consideration of Protests and Comments*

There has been no public expression of protest or concern regarding the subject proposal, and no findings through this investigation indicate that there would be any detrimental impact to the public welfare through issuance of the proposed appropriation.

Chapter 90.54 RCW provides that water allocation shall secure maximum net benefits to the people of the state, while also requiring that perennial rivers of the state shall be retained with base flows necessary to provide for the preservation of fish and other environmental values. To maintain these values, mining operations and fire protection under this authorization shall be subject to the minimum instream flow of 7,700 cfs as measured at USGS gage #12395500 near Newport set by WDFW on October 18, 1999.

The approval of this application for this quantity and use will not be detrimental to the public interest.

### Conclusions

It is the conclusion of this examiner that water is available for mining and fire protection. This appropriation is considered a beneficial use and will not impair existing water rights or be detrimental to the public welfare.

### RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above



### Purpose of Use and Authorized Quantities

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The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

400 gpm

30 acre-feet per year

Mining and Fire Protection

Point of Withdrawal

Location: 370 feet south and 2380 feet east from the NW corner, within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 15, Township 39 North, Range 43 E.W.M.

Place of Use

SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15, Township 39 North, Range 43 E.W.M.

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*Jeff MacLennan, Report Writer*

*Date*